

**Memorandum of Decision 01-20221059
Indiana Individual Income Tax
For the Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

The Department agreed with out-of-state Residents that they were entitled to a refund of a portion of their originally reported 2019 Indiana income tax. Based on their amended 2019 Indiana return and the documentation provided, Residents established that a portion of their 2019 income should have been sourced to Georgia.

ISSUE

I. Indiana Individual Income Tax - Refund of Indiana Withholding Tax.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers argue that they are entitled to a partial refund of income tax withheld on their behalf.

STATEMENT OF FACTS

Taxpayers are individuals who filed a joint 2019 Indiana individual income tax return. On that return, Taxpayers reported the taxes withheld on their behalf by Employer.

Subsequently, Taxpayer filed a 2019 amended Indiana income tax return. On that return, Taxpayers requested a partial refund of tax on the ground that the income earned from Employer should have been sourced to both Indiana and Georgia. Simultaneously, Taxpayers filed a Georgia individual income tax return to report the income which - according to Taxpayers - should have been sourced to Georgia and not Indiana. Taxpayers paid the resulting additional Georgia income tax.

The Indiana Department of Revenue ("Department") reviewed Taxpayers' 2019 income tax return. The Department denied the refund in a letter dated December 2019. In that letter, the Department explained the basis for its decision as follows:

The Indiana Department of Revenue (DOR) reviewed your claim for a refund and must deny it because according to your W2 your original return was filed correctly. If the wages are incorrect you will need to provide either a W2C or a letter on company letterhead signed by an officer [stating] what the corrected figures are.

Taxpayers disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayers explained the basis for their protest. This Memorandum of Decision results.

This Memorandum of Decision alternatively refers to both "Taxpayers" and "Taxpayer" depending on context. "Taxpayers" indicate the persons who jointly filed the return while "Taxpayer" refers to the individual who worked for Employer and who received income from that Employer.

I. Indiana Individual Income Tax - Refund of Indiana Withholding Tax.

DISCUSSION

The issue is whether Taxpayers have established that their 2019 income should have been sourced to both Indiana and Georgia. If Taxpayers establish that a portion of their 2019 income should have been sourced to Georgia, Taxpayers are entitled to a similarly apportioned refund of the Indiana income tax originally reported and paid. If they do not meet that burden, they are not entitled to any portion of that original tax.

In their original protest letter, Taxpayers explain:

During 2019, [Employer] made a mistake on how they taxed me throughout the year. I lived in Georgia and worked in Georgia a considerable portion of my worktime. [Employer] charged me IN taxes for the entire year. I refilled my taxes after speaking to several tax professionals who told me I should have only paid IN and [Indiana county] taxes the actual days I worked in IN versus what I worked in GA.

In its decision denying the refund, the Department found that Taxpayers were required to report all 2019 income as Indiana income and pay tax on that income. Tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. To compute efficiently and effectively what is considered a taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying any additions and subtractions to that starting point.

IC § 6-3-2-2(a) provides in part:

With regard to corporations and *nonresident persons*, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from *doing business in this state*;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services *rendered within this state*; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section. (*Emphasis added*).

Taxpayers necessarily rely on the "derived from sources from within Indiana" language to underscore their argument that not all the originally reported income was attributable to Indiana. In order to establish what portion of their income was "derived from sources from within Indiana," Taxpayers provided a copy of a letter received from Employer. As explained by Taxpayers, they provided "a signed letter from the Vice President Human Resources at [Employer] stating the same information which validates the tax splits I included in my amended taxes."

The "VP of Human Resources" letter states:

This letter is to clarify the amount of [Taxpayer's] Indiana source wages. Currently, [Taxpayer] resides in Georgia and is considered a tax resident there. He performed his work services in Georgia and Indiana for [Employer].

Thereafter, the Employer delineated the number of Taxpayer's "work days" in Georgia (96) from the number of "work days" in Indiana (260). Using that 96/260 ratio, the Employer apportioned the amount of income the author attributes to Indiana and the amount of income the Employer attributes to Georgia. Accordingly, the Employer attributes a larger portion of the income to Indiana.

The letter continues:

Unfortunately, our payroll system could not properly accommodate [Taxpayer's] tax residency status. His wages for services performed in other locations were included in Box 16, reported to Indiana on his 2019 Form W-2.

The Department here notes that "Box 16" refers to "State wages, tips, etc."

The Department has not challenged Taxpayers' "residency" status but challenges the accuracy and sufficiency of their argument that a portion of their 2019 income should have been attributed to Indiana and a portion of that income should have been attributed to Georgia. As explained IC § 6-3-2-2(a), nonresident persons (such as Taxpayers) report and pay tax on income "derived from sources within Indiana" for "labor or services rendered within this state."

Taxpayers correctly filed both amended Indiana and Georgia income taxes fully accounting for the 2019 income derived from Employer. Because Taxpayers provided an adequate explanation and relevant documentation explaining the basis for their protest, the Department sustains the protest.

FINDING

Taxpayers' protest is sustained.

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